IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O.No.777 of 2002

Popat Vitthal Shivale and Ors..Appellants

V/s

Shri Yashwant Tukaram Shevale
since decesed through his legal
heirs .. Respondents

Shri Vilas B. Tapkir for Appellants

Shri C.D.Konale for Respondents

CORAM:A.S.OKA,J.

DATED:14th Feb. 2005

P.C.:-

1. Heard the learned Counsel for parties. The challenge in this appeal preferred by the original plaintiffs is to the order of remand passed by the appellate Court.

2. The learned Counsel appearing for the Appellants submitted that instead of remanding the matter to the trial Court, the Appellate Court should have permitted the parties to lead additional evidence in Appeal and ought to have

decided the matter. He, therefore, submitted that remand was unwarranted.

3. The Appellate Court has noted that an application was made by the Respondents under Order 4 Rule 27 of the Code of Civil Procedure, 1908 for production of additional evidence. The Appellate Court has allowed the said application. In the circumstances the Appellate Court has passed the order of remand. As additional documentary evidence is produced in the Appellate Court, the parties will have to lead evidence on the said additional document. Hence no fault can be found with the order of remand.

5. Hence the appeal is dismissed with no order as to costs. The learned trial Judge will decide the suit as expeditiously as possible and in any event on or before 31-12-2005. All contentions on merits are kept open.

(A.S.Oka,J.)